CHOW KIM LAN v. PUBLIC PROSECUTOR

[A.Cr.J. (Yong J.) December 5, 1965]

[Alor Star — Kedah Criminal Appeal No. 35 of 1965]

Criminal Law and Procedure — Binding over to keep peace — Necessity to call upon person to show cause — Criminal Procedure Code (Cap. 6), ss. 66A, 67 and 173A(ii)(b).

In this case the learned magistrate found the accused guilty of voluntarily causing hurt under section 323 of the Penal Code and he ordered her to pay compensation to the complainant and bound her over under section 173A(ii)(b) of the Criminal Procedure Code. He also bound the complainant and her witness to keep the peace for six months without first giving them an opportunity to show cause.

Held: (1) it is imperative that the complainant should have been called upon to show cause and only upon her failure to do so, could the court have ordered her to execute a bond to keep the peace;

(2) the learned magistrate had acted contrary to the provisions of the Criminal Procedure Code and therefore the order for binding over of the complainant and her witness must be set aside.

CRIMINAL APPEAL.

O. L. Phipps for the appellant.

Wan Ismail (Deputy Public Prosecutor) for the respondent.

Cur. Adv. Vult.

Yong J.: This is an appeal by the complainant against the order of the magistrate in Kulim Magistrate's Court Summons Case No. 464 of 1965 in which the learned magistrate found the accused guilty of voluntarily causing hurt to the complainant under section 323 of the Penal Code, ordered her to pay to the complainant the sum of $43.50 as compensation and bound her over under section 173A(ii)(b) of the Criminal Procedure Code. He also bound the complainant and her witness Tan Siew Keok (f) to keep the peace for 6 months without first giving them an opportunity to show cause.

Under section 66A of the Criminal Procedure Code it is imperative that the complainant should first be called upon to show cause and only upon her failure to do so, could the court order her to execute a bond to keep the peace.

Similarly under section 67, whenever it appears to a magistrate that any person residing or being within the local limits of his jurisdiction is likely to commit a breach of the peace, such magistrate may require such person to show cause and upon her failure to do so, the magistrate may then order her to execute a bond to keep the peace for a period not exceeding 6 months.

The learned magistrate in this case has acted contrary to the provisions of the Criminal Procedure Code and his order binding over the complainant and her witness Tan Siew Keok (f) to keep the peace is hereby set aside.

Order accordingly.

Solicitors: *Lim Kean Siew & Co.*

RAHMAH v. BATCHA

[O.C.J. (Ismail Khan J.) December 8, 1965]

[Seremban — Civil Suit No. 10 of 1963]

Damages — Personal injury — Leg — 1½" shortening — Permanent limp.

Negligence — Liability — Accident caused in avoiding buffalo crossing road — Damages.

The plaintiff claimed damages for injuries received by her as a passenger in a motor car, driven by the defendant. It appeared that the accident was caused when the defendant tried to avoid running into a buffalo which was crossing the road. The plaintiff suffered a compound fracture of the left femur.

Held: (1) on the evidence the court was satisfied that the defendant, after having seen the buffaloes when they were some distance away failed to proceed at a speed which would have enabled him to pull up almost abruptly when one of them cut across the path of the car and therefore the defendant was negligent;

(2) in the circumstances a sum of $8,000 would be a fair compensation under the head of general damages.

Cases referred to:—

(1) *Parkinson* v. *Liverpool Corporation* [1950] 1 All E.R. 367.

(2) *Sutherland* v. *Glasgow Corporation* [1949] Sc. L.T. 388 at p. 391.

(3) *Kayser* v. *London Passenger Transport Board* [1950] 1 All E.R. 231.

CIVIL SUIT.

V. C. George for the plaintiff.

N. A. Majoribanks for the defendant.

Cur. Adv. Vult.

Ismail Khan J.: The plaintiff suing by her next friend claims damages for injuries received by her as a passenger in a motor car M 9730. The car was driven by the defendant when it met with an accident at the 11th mile, Labu Road, at 8 p.m. on 24th December, 1961.

In her statement of claim she claims that the accident was due to the negligent driving of the defendant. This is denied in the defence wherein it is alleged that the injuries arose from inevitable accident.

It is not in dispute that the plaintiff was one of the passengers in the car at the time of the accident which occurred at the 11th mile when the defendant was driving to his house at Kubang Estate, Nilai.

In her evidence the plaintiff said that it was drizzling a little at the 11th mile and there was a buffalo on the right side of the road about 100 yards away. At this point there was a straight stretch of road. There was no other traffic. After passing a culvert she saw a